

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL CASE NO. 3:07cv540

DENNIS C. SHOEMAKER,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
PRECISION STEEL WAREHOUSE,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on the Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), (5), and (6) [Doc. 6] and the Magistrate Judge's Memorandum and Recommendation, filed on March 12, 2008.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Carl Horn, III was designated to consider a pending motion in the above-captioned civil action and to submit to this Court a recommendation for the disposition of this motion.

On March 12, 2008, the Magistrate Judge filed a Memorandum and Recommendation [Doc. 10] in this case containing proposed conclusions of law in support of a recommendation regarding the Defendant's Motion to Dismiss [Doc. 6]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 10] were to be filed in writing within ten (10) days of service. The period within which to file objections expired on March 26, 2008. No written objections to the Memorandum and Recommendation [Doc. 10] have been filed.

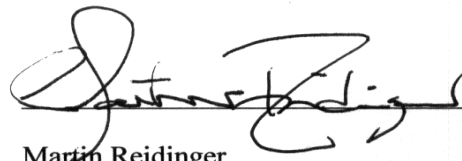
After a careful review of the Magistrate Judge's Recommendation [Doc. 10], the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby **ACCEPTS** the Magistrate Judge's Recommendation [Doc. 10] that the Defendant's Motion to Dismiss [Doc. 6] be granted in part and denied in part.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), (5), and (6) [Doc. 6] is **GRANTED** as to the Plaintiff's Title VII claims, but **DENIED** as to the Plaintiff's ADA and ADEA claims, so long as the Plaintiff files and properly serves an Amended Complaint, correcting the deficiencies identified in the Magistrate Judge's Memorandum and Recommendation

[Doc. 10], on or before **April 22, 2008**. The Plaintiff's failure to file and properly serve an Amended Complaint on or before April 22, 2008 may result in the dismissal of his remaining claims.

IT IS SO ORDERED.

Signed: April 1, 2008


Martin Reidinger
United States District Judge

